

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

---

In the Matter of PATRICIA L. MARTINDALE and DEPARTMENT OF VETERANS  
AFFAIRS, VETERANS ADMINISTRATION MEDICAL CENTER, Chillicothe, OH

*Docket No. 01-1152; Submitted on the Record;  
Issued December 28, 2001*

---

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,  
A. PETER KANJORSKI

The issue is whether appellant has a permanent impairment of the breast for which she would receive a schedule award.

On December 7, 1999 appellant, then a 46-year-old nursing assistant, was participating in a class on disruptive patient behavior when she was struck on the right breast by the instructor's elbow. The Office of Workers' Compensation Programs accepted appellant's claim for a rupture of her breast implant. Appellant underwent surgery for removal and replacement of the right breast implant. The Office paid compensation for the period appellant did not work due to the surgery.

On May 2, 2000 appellant filed a claim for a schedule award. In a September 20, 2000 decision, the Office denied appellant's claim for a schedule award on the grounds that the medical evidence of record was insufficient to establish that appellant was entitled to a schedule award. In a January 2, 2001 letter, appellant requested reconsideration. In a February 23, 2001 decision, the Office denied appellant's request for reconsideration on the grounds that she had not submitted new or relevant medical evidence in support of a schedule award for permanent impairment of the right breast.

The Board finds that appellant has not established that she is entitled to a schedule award for the right breast.

The schedule award provisions of the Federal Employees' Compensation Act<sup>1</sup> and its implementing regulation<sup>2</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss, or loss of use, of scheduled members or functions of the body. However, the Act does not specify the manner in which the percentage of loss shall be

---

<sup>1</sup> 5 U.S.C. § 8107.

<sup>2</sup> 20 C.F.R. § 10.404 (1999).

determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment* has been adopted by the implementing regulation as the appropriate standard for evaluating schedule losses.

To receive a schedule award for permanent impairment of the breast, a claimant must submit medical evidence which establishes a permanent impairment of the function of the breast. In a May 30, 2000 letter, the Office asked appellant to have her treating physician, Dr. Steven Robinson, a plastic surgeon, submit a report describing the factors of restriction of motion, pain, discomfort, decrease of strength, atrophy, or other factors which would describe appellant's permanent impairment. Appellant, however, only submitted operative reports, medical notes from her hospitalization, and a report from a physical therapist. She did not submit any report from Dr. Robinson or any other physician which would show that she had reached maximum medical improvement or had any permanent impairment of the breast. Appellant therefore has not established that she is entitled to a schedule award.

The decisions of the Office of Workers' Compensation Programs, dated February 23, 2001 and September 20, 2000, are hereby affirmed.

Dated, Washington, DC  
December 28, 2001

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

A. Peter Kanjorski  
Alternate Member